

## **REMARKS**

### **Disavowal of Prior Arguments**

In concert with a change in counsel, Applicants hereby disavow all prior arguments regarding patentability made during prosecution of this case.

### **Claim Amendments**

Independent claim 1 has been amended to require, *inter alia*, that the body include a "first endcap facing said spacer that is disposed generally transverse to said longitudinal axis and extends radially outward from said shaft." Support for this limitation can be found in, for example, Fig. 7 and ¶¶ 0048-0049 of the specification. Accordingly, Applicant submits that no new matter is added by this amendment.

Dependent claims 119-125 have been added that depend directly or indirectly from independent claim 1. The subject matter of these claims is supported in the specification and drawings, for example, in Fig. 7 and ¶¶ 0048-0049 of the specification. Accordingly, Applicant submits that no new matter is added by the addition these claims.

With regard to new claim 126, see original claim 118 (now canceled). With regard to new claim 127, see claim 1 prior to this amendment. Applicant submits that no new matter is added by the addition these claims.

Claims 128-137 have been added. Support for these claims can be found in, for example, Fig. 7 and ¶¶ 0048-0049 of the specification. Accordingly, Applicant submits that no new matter is added by the addition these claims.

**Rejection of Claim 60 and its dependent claims**

In the Action of 20 August 2007, claims 60-67, 97, 106, 108-110, 112-113 were rejected under §103 as being obvious over FR 2724554 ("Voydeville") in view of U.S. Patent No. 5,674,296 ("Bryan"). Applicant respectfully requests reconsideration in view of the remarks below.

Independent claim 1 as amended requires, *inter alia*, that the body include a "first endcap facing said spacer that is disposed generally transverse to said longitudinal axis and extends radially outward from said shaft." In making the §103 rejection, the Voydeville ligament 2 is identified as the "shaft", and the two parts 3,4 are identified as "wings." A review of Voydeville Figs. 1 & 4 finds that the parts 3,4 are disposed generally parallel to the ligament 2, not generally transverse thereto. And, nothing in Bryan cures this defect. Accordingly, Applicant submits that independent claim 1, and its dependent claims, define patentable subject matter over the cited art.

With further regard to dependent claim 119, this claim requires that the shaft comprise "a central bore extending along said longitudinal axis." The putative shaft of Voydeville, the ligament 2, does not include a central bore. And, nothing in Bryan cures this defect. Accordingly, claim 119 defines patentable subject matter over the cited art.

With further regard to dependent claims 120-122, these claims require "a second endcap disposed in spaced relation to said first endcap and generally transverse to said longitudinal axis," and further requires that the spacer be "disposed between said first and second endcaps." Voydeville does not disclose a first endcap as claimed, much less a second endcap as claimed. And, nothing in Bryan cures this defect. Nor does either reference disclose integrally formed endcaps or that the endcaps should be

disposed on opposing ends of said shaft. Accordingly, claim 120, and its dependent claim 121-122, define patentable subject matter over the cited art.

With further regard to dependent claim 123, this claim requires that the "first endcap is integrally formed with said shaft." As discussed above, Voydeville does not disclose the first endcap as claimed, much less one that is integrally formed with the putative shaft of Voydeville (ligament 2). And, nothing in Bryan cures this defect. Accordingly, claim 123 defines patentable subject matter over the cited art.

With further regard to dependent claim 124, this claim requires that the "first endcap constrains displacement of said spacer along said longitudinal axis." As discussed above, Voydeville does not disclose the first endcap as claimed. And, the only items in Voydeville that appear to constrain the longitudinal movement of the spacer are the upper and lower spinous processes E1,E2. And, nothing in Bryan cures this defect. Accordingly, claim 124 defines patentable subject matter over the cited art.

With further regard to dependent claim 125, this claim requires that the first endcap have "a rounded face oriented toward said spacer and annular with respect to said shaft." Such an arrangement is described, for example, in ¶0048 where the endcap shape is described as being "elliptical, circular, oval or egg-shaped." As discussed above, Voydeville does not disclose the first endcap as claimed, much less one that has the configuration as claimed. And, nothing in Bryan cures this defect. Accordingly, claim 125 defines patentable subject matter over the cited art.


**New Claims 128-137**

Independent claim 128 has been added. This claim requires, *inter alia*, that the implant include "a flange disposed toward one end of said central member in a transverse orientation to said longitudinal axis," and that the flange "constrain displacement of said spacer relative to said central member in a first direction along said longitudinal axis when said spacer is disposed between the spinous processes." The Voydeville shock absorber 1 is constrained from movement in either direction along the Voydeville ligament 2, when disposed between the spinous processes, by the spinous processes themselves. Thus, even assuming *arguendo* that parts 3,4 somehow qualify as flanges, they do not act to constrain the displacement of the Voydeville shock absorber 1. And, nothing in Bryan cures this defect. Accordingly, independent claim 128, and its dependent claims, define patentable subject matter over the cited art.

From the above, it is respectfully urged that the present application is in condition for allowance and notice to such effect is respectfully requested.

Respectfully submitted,  
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